



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **MAN/00EQ/PHC/2019/0007**

Property : **Meadow House Park, Badcocks Lane,
Spurstow, Tarporley, CW6 9RT**

Applicant : **Meadow House Park Qualifying Residents
Association Limited**

Respondent : **Charles Webb Homes Limited**

**Type of
Application** : **Section 4 Mobile Homes Act 1983**

Tribunal Members : **Mr John Murray LLB
Mr Peter Mountain**

Date of Decision : **15 July 2020**

REASONS FOR DECISION

INTRODUCTION

1. The Applicant Residents Association made an application under s4 of the Mobile Homes Act 1983 (the Act) for a determination of a question arising under the Act or agreement to which it applies.
2. The Applicant seeks an Order from the Tribunal that the Respondent Mr. Charles Webb complies with section 22(f) of the implied terms in accordance with the Act, by consulting with them about all matters relating to the operation and management of, or improvements to, the protected site.

THE PROCEEDINGS

3. Directions were made by a Procedural Judge on the 20 January 2020 for the parties to exchange statements of case and documentation, and for the matter to be dealt with at a hearing.
4. The Applicant asked that a hearing be avoided, to save expense for the Resident's Association.
5. The Applicant filed a bundle of documents. The Respondent failed to comply with directions, and played no part in the proceedings at all, save emails on the 1 July 2020 indicating his solicitors might contact the Tribunal. The Respondent was told that a Tribunal Judge had decided that in the absence of any response from the site owner, the Tribunal would determine the application without holding an oral hearing, and without inspecting the site.

THE PARK HOMES SITE

6. The same Tribunal had inspected the Property on Wednesday 5 September 2018. Observations of that visit are set out below.
7. Meadow House Park is a small park home site of 24 properties, effectively laid out in a figure of eight pattern. The entry is from a country lane.
8. The Tribunal observed that the park was in a neat and tidy condition, with the grass neatly mowed, and hedges trimmed. There was an instance where a fir tree had grown around the street lamp partially obscuring it. The park, understood to be over 25 years old, was showing some signs of ageing; the Tribunal were shown some areas where the access road was slightly worn in areas, commensurate with its age. The Tribunal were shown two road drains where there was deterioration (and possible tripping hazards) which required attention.
9. The Tribunal noted that many of the driveways were on a slant, which led to pooling water demonstrated in the photographs provided by the Respondents, and flooding of some sheds/deterioration of their doors. The submissions had

confirmed that there was no main drainage system, but a soak-away system draining into the ground.

THE LEGISLATION

10. The relevant legislation is contained in s4 of the Act which gives the court jurisdiction to determine any question arising under the Act or any agreement to which it applies, and to entertain any proceedings brought under the Act or any such agreement.

11. The First-tier Tribunal was granted further powers by s231A of the Housing Act 2004 which provides as follows:

s231A.

Additional Powers of First-tier Tribunal and Upper Tribunal

- (1) The First-tier Tribunal and Upper Tribunal exercising any jurisdiction conferred by or under the Caravan Sites and Control of Development Act 1960, the Mobile Homes Act 1983, the Housing Act 1985 or this Act has, in addition to any specific powers exercisable by them in exercising that jurisdiction, the general power mentioned in subsection (2).
- (2) The tribunal's general power is a power to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.
- (3) When exercising jurisdiction under this Act, the directions which may be given by the tribunal under its general power include (where appropriate)—
 - (a) directions requiring a licence to be granted under Part 2 or 3 of this Act;
 - (b) directions requiring any licence so granted to contain such terms as are specified in the directions;
 - (c) directions requiring any order made under Part 4 of this Act to contain such terms as are so specified;
 - (d) directions that any building or part of a building so specified is to be treated as if an HMO declaration had been served in respect of it on such date as is so specified (and such a direction is to be an excluded decision for the purposes of section 11(1) and 13(1) of the Tribunals, Courts and Enforcement Act 2007);
 - (e) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.

...

- (4) When exercising jurisdiction under the Mobile Homes Act 1983, the directions which may be given by the tribunal under its general power include (where appropriate) –
- (a) directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;
 - (b) directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;
 - (c) directions requiring cleaning, repairs, restoration, re-positioning or other works to be carried out in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions;
 - (d) directions requiring the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.

12. The jurisdiction of the court was transferred to the First tier Tribunal (Property Chamber) by s231A Housing Act 2004 inserted by the Transfer of Tribunal Functions Order 2013.

WRITTEN SUBMISSIONS

THE APPLICANTS SUBMISSIONS

13. The Applicant's submissions were made by Mr. Gordon Whitehead, secretary of the Residents Association. He outlined difficulties the residents had had with communication with the park warden and Mr. Webb. He said that the Park Warden has returned mail, and tried to persuade members individually to pay an increased pitch fee and to leave the Association. Correspondence that he had sent had been ignored.
14. He requested that the Tribunal make an order that Mr Charles Webb shall comply with paragraph 22(f) of the implied terms (schedule 1 Mobile Homes Act 1983) by consulting the residents association in relation to the operation and management of, or improvements to the protected site. He asked that the Tribunal instructed Mr. Webb and his representative to abide by the agreement and communicate with the association on a regular basis.
15. He provided examples of matters where the Respondent had not complied with obligations under paragraph 22 of the implied terms:

(a) paragraph 22(a) :

- i. Mr. Roberts (number 7) had sent a cheque and request under for written details of his pitch but received no reply.
- ii. Mrs. Owen (number 19) requested information regarding her boundaries but received no reply.
- iii. Mr. Saunders (number 1) requested plans; he received a reply from IBB Law saying a surveyor was "shortly to be instructed". This was in December of 2018. No further information was provided in the submissions as to whether that instruction took place.

(b) paragraph 22(c) :

- i. Mrs. Worsley (number 24) sent letters to Mr. Webb about a crack in her base and flooding problems on her driveway causing damage to tarmac and shed doors; none of these were addressed and she received no reply.
- ii. Mr. Butler (number 25) sent a request for his electricity to be attached to the Parks supply but received no response.
- iii. Mr. Whitehead (number 23) sent letters and emails asking for repairs to his shed driveway and lawn caused by flooding, and to make safe issues regarding distribution boxes unmarked and unlabelled in residents gardens. No reply was received.
- iv. Mrs Jones (number 5) had requested paving flags around her home to be re-laid as they were considered a danger to her and her visitors. She received no reply.

16. Mr. Whitehead asked that the Respondent pay the Applicant's costs of the application.

THE RESPONDENTS SUBMISSIONS

17. The Respondent took no part in the proceedings and filed no submissions, until an email was sent on the day of the determination to the Tribunal office by a solicitor Mr Clement of IBB Law LLP which stated the following:
18. The application has been brought in the name of "Meadow House Park Qualifying Residents Association". In law, a Residents' Association has no legal standing to bring or defend legal proceedings in its own right, as it is an unincorporated association and therefore does not have a separate legal personality;
19. The Respondent site owner should be Charles Webb Homes Limited (Company number 08435625), not Mr Webb personally. Mr Webb is a director of the company;
20. It is unclear in any event what the basis of the application is, or what Order(s) the Applicant is asking the Tribunal to make. Despite the Directions Order made on 20 January 2020 the Respondent has not received any statement of

case from the Applicant, and so has been unable to respond fully. The Applicants have also failed to attach their written statements as directed;

21. The Respondent has previously provided the Applicant and the residents with an address where communications can be sent to it (see document 8 of the papers attached to the application) in compliance with paragraph 27 of the statutory implied terms under Schedule 1 part 1 of the Mobile Homes Act 1983, as amended;
22. The 2018 pitch fee dispute was determined by the Tribunal in favour of the Respondent – a copy of the decision dated 11 September 2018 is attached;
23. The Applicant is aware of the need to communicate with the residents but is under no statutory or contractual duty to respond to every communication; and
24. If any individual residents believe that the Respondent has breached the terms of their agreement, it would be for them to bring separate Tribunal proceedings in relation to such alleged breaches. As no evidence of breach has been submitted by any individual resident, the Respondent requests that the present application be dismissed on the basis that there is no factual or legal basis for any Order to be made against the Respondent.

THE APPLICANTS RESPONSE

25. Despite these submissions being made on the day of the hearing, Mr Whitehead was able to email a response to the Tribunal.
26. He made the following points:
27. the statement of case was sent by recorded mail on 06/02/20 ref num: WM866435336GB to Mr. Webb
28. as an official qualifying residents association we are representing the association members. it should not be the case that each person has to take on matters individually. as clearly communication is none existent. it is because of poor communication that the association has been formed.
29. Regarding the pitch fee claim it was removed from the case as this was an error made by the tribunal and not us. A letter sent by the tribunal on 22/01 clearly shows this was removed and therefore not part of the case.
30. In respect of the case application it states Mr Charles Webb of Charles Webb Homes Ltd. I believe this should suffice as Mr Webb is the Director of said company and he is the only person who we all can contact as per his instructions.

THE DETERMINATION

31. The Tribunal has jurisdiction under section 4 of the Mobile Homes Act 1983 to determine any question arising under this Act or any agreement to which it applies.
32. The Respondent made their submissions late, and not in accordance with the directions whereby they should have been filed and served within 21 days of their receipt of the Applicant's bundle.
33. The Respondent's solicitor said that his client had not appreciated that a formal response was required, as he believe the application was postponed due to lockdown and the directions referred to a pitch fee increase. He said he had not received the statement of case as directed.
34. In response to that assertion, Mr. Whitehead stated that the statement of case was sent by recorded mail on 6 February 2020 reference number WM866435336GB to Mr. Webb. In any event the substance of the statement of case and supporting evidence had been supplied with the original application and had been seen by the Respondent.
35. The Tribunal had sent out amended directions, clarifying the earlier error. Mr. Webb had played no part in the proceedings, had been sent several letters by the Tribunal (to the address he conceded was the correct address for service), had indicated he would be instructing his solicitor but failed to do until the day of the determination. The Tribunal had at no point indicated to him that the matter would not be progressed, and on the 1 July he was told the matter would be determined without a hearing. The Respondent's failure to engage in the proceedings was very much in accordance with the Applicant's submissions that he failed to communicate with them. The Tribunal was satisfied that the Respondent was aware of the proceedings, had played no part in them, and had not sought an adjournment, and that the determination should proceed, and that the Respondent's submissions were made out of time. The Respondent did not challenge any of the alleged breaches of its obligations under paragraph 22 of the implied terms.
36. The Tribunal is satisfied that the Applicant is a Qualifying Residents' Association in accordance with paragraph 28(1) of Schedule 1 to the Mobile Homes Act 1983 and as such is able to represent its members. In accordance with the Overriding objective it is fair, just and proportionate to enable it to make the application on behalf of those members, and avoids unnecessary formality/delay of individual applications. The Tribunal regularly receives and determines applications from Qualifying Residents Associations.

37. For the avoidance of any doubt the Tribunal substitutes Charles Webb Homes Limited as the sole Respondent to this application pursuant to paragraph 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
38. The Tribunal in its determination of pitch fees in 2018 recognised that consultative dialogue between the (at that time) recently formed Residents Association and the Respondent would be beneficial, and pointed out the Applicant's statutory obligation. It is clear from the submissions of the Applicant that such observation went unheeded by the Respondent, and no constructive discussions have taken place. In the 2018 case no direction was sought or made, and the comments were merely an observation.
39. In the present case, the Applicant specifically sought a direction that the Respondent comply with paragraph 22(f) of the implied terms (schedule 1 Mobile Homes Act 1983) by consulting the Applicant in relation to the operation and management of, or improvements to the protected site. He asked that the Tribunal instruct the Respondent to abide by the agreement and communicate with the association on a regular basis.
40. The Tribunal has powers under s231A of the Housing Act 2004 to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue in or in connection with them.
41. The Tribunal has previously made an observation that communication between the parties could be improved.
42. There is evidence before the Tribunal that the Respondent has evaded consultation with the Applicant in relation to the operation and management of the site pursuant to paragraph 22(f) of the implied terms in Schedule 1 of the Act, and evidence of noncompliance towards individual residents in respect of obligations under paragraphs 22(a) and 22(c). That evidence was unchallenged, and the Tribunal therefore accepts that evidence in its entirety.
43. The Tribunal issues the following directions:
44. That the Respondent complies with paragraph 22 of the implied terms as follows:
45. paragraph 22(a) : provide written details of the pitch in accordance with the paragraph to any resident requesting the same and providing any requested payment (not in excess of £30) within 56 days of this determination or subsequent request.
46. paragraph 22(c) : respond to requests for repairs to numbers 5, 23,24 and 25 within 56 days of this determination, by carrying out an inspection and

executing any repairs necessary. Respond to the request for electricity at number 25 to be attached to the Park's supply, as appropriate.

47. Paragraph 22(f): propose a meaningful method of consultation with the Applicant within three months of this determination and embark on the same within six months and thereafter continue to comply with the requirements of this paragraph for the operation, management and improvement of the site.
48. These directions are by their nature general and designed to alleviate the immediate concerns of the Applicant's members. The Tribunal reminds the parties that it has powers pursuant to s231A(4) of the Housing Act 2004 to direct the payment of money by one party to another by way of compensation, damages or otherwise, and to direct cleaning, repairs, repositioning or other works to be carried out, the establishment, provision or maintenance of any service or amenity in connection with a mobile home, pitch or protected site.
49. Should the directions not be complied with, it would be open to individual members to apply to the Tribunal for further directions.
50. The Tribunal determines that the Respondent should pay the issue fee of £100 to the Applicant within 14 days of receipt of this determination.

Judge J Murray
15 July 2020